

NATIONAL ASSOCIATION OF SECURITIES DEALERS-

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration BetweenName of Claimant(s)

Robert A. Petrillo and Anne Petrillo

91-00811

Name of Respondent(s)James Whitten
Philip Pinkert

REPRESENTATION

Claimants, Robert A. and Anne Petrillo were pro se.

For Respondent, James Whitten, Fredda L. Plessner, Esq. of Tenzer, Greenblatt,
Fallon & Kaplan.

For Respondent, Philip Pinkert, Darren Lampert of Lampert & Lampert.

CASE INFORMATION

Statement of Claim filed: 3/13/91.

Claimant's Submission Agreement signed on: 3/8/91.

Respondent, James Whitten's Submission Agreement signed on: 6/26/91

Respondent, Philip Pinkert's Submission Agreement signed on: 4/4/91

Statement of Answer filed by Respondent James Whitten on: 7/31/91

Statement of Answer filed by Respondent Philip Pinkert on: 4/22/91

HEARING INFORMATION

Hearing Date: 8/7/91-Two Sessions

Hearing Date: 8/8/91-One Session

Total number of sessions-Three (3)

Hearing Location: New York City, NY

CASE SUMMARY

Claimants, Philip A. and Anne Petrillo alleged that through various misrepresentations by Respondents, James Whitten and Philip Pinkert, they were induced to purchase 2,000 shares of United Medical Buildings ("UMB") and 1,500 shares of "ASSIX" which resulted in tremendous losses to Claimants.

Respondent, James Whitten ("Whitten"), denied that there had been any direct or indirect business relationship between Claimants and Whitten and that the only contact Claimants had with Whitten was one telephone call which Mr. Whitten accepted in his capacity as director of UMB. Respondent, Whitten further made a motion to dismiss Claimants' claim as against him on those grounds as well as on the grounds of the NASD's lack of jurisdiction over Whitten in this matter.

Respondent, Philip Pinkert ("Pinkert"), denied all allegations of wrong-doing and maintained that Claimants are barred from recovery by reason of their failure to timely object to the transactions complained of as required by contractual language set forth in Confirmation Notices received by Claimants subsequent to each transaction. Pinkert also contended that Claimants' losses were caused or contributed to by Claimants' own fault or conduct and that Claimants failed to state a claim upon which relief can be granted against Pinkert.

RELIEF REQUESTED

Claimants requested: 1989 loss on sale of 2,000 shares of UMB - \$5000.00; 1990 loss on sale of 1,500 shares of ASSIX - \$9,732.00 plus the difference between the current price of UMB and the purchase price average of 13,433 shares at \$7.50 per share for an approximate total of \$62,000.00.

Respondent, James Whitten, requested dismissal of the Claim plus appropriate costs and attorneys fees.

Respondent, Philip Pinkert, requested dismissal of the claim as well as all arbitration fees costs and attorneys fees.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

(The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD).

AWARD-#91-00811

1. All Claims of the Claimants, Robert A. and Anne Petrillo, against Respondents, James Whitten and Philip Pinkert, shall be and are hereby dismissed in all respects;
2. The parties shall each bear their respective costs, including attorneys' fees;
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$650.00 filing fee previously deposited by the Claimants (\$150.00-Non-refundable deposit and \$500.00 hearing session deposit).

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

Claimants, Robert A. and Anne Petrillo, are hereby assessed forum fees in the amount of \$500.00 (2 session X \$500 less hearing session deposit of \$500 = net \$500);

Respondent, Philip Pinkert, is hereby assessed forum fees in the amount of \$1,000.00 (2 sessions X \$500 = \$1,000).

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Name	Public/Industry
<u>Richard W. Vallario, Esq.</u>	<u>Public/Chairman</u>
<u>Roger Brandwein</u>	<u>Public/Panelist</u>
<u>Andrew Reegen</u>	<u>Industry/Panelist</u>

Concurring Arbitrator's Signature


Andrew Reegen

Date of Decision: _____

Dated by the NASD: September 25, 1991

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Richard W. Vallario, Esq.

Public/Industry

Public/Chairman

Roger Brankwein

Public/Panelist

Andrew Reegen

Industry/Panelist

Concurring Arbitrator's Signature



Richard W. Vallario, Esq.

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